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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/773,835 | 01/31/2001 | Paul E. Bender | PA000459 | 7156 |

23696 7590 01/27/2004

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| EXAMINER |
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ELALLAM, AHMED

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 2662 | 9 |

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,835

Applicant(s)

BENDER ET AL.

Examiner

AHMED ELALLAM

Art Unit

2662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/31/2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-35, 49 and 50 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 36-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-4, 23, 33, 36, 37, 39, 40-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Zellner et al, US (6,069,882).

Regarding claim 1, Zellner discloses a method in a communication system for communication of data, the method comprising:

Receiving a call request at a mobile switch (reads on detecting a request for opening a connection for a user for communication of data);

Ascertaining an available idle channel; and assigning the idle channel to the user, see abstract, column 1, lines 37-column 2, line 24. (Reads on selecting an open connection; releasing said selected open connection; allocating to user, communication resources corresponding to resources released based on the releasing the selected open connection).

Regarding claims 2-4, Zellner discloses allocating a vacated channel from a lower priority user to be used by the requesting higher priority user, see column 8, line

Art Unit: 2662

21-26. (Reads on selected open channel is in a idle open state as in claim 2, and busy open state as in claim 3).

Regarding claim 33, Zellner discloses detecting non-availability of idle channel. See column 7, lines 60-column 8, and line 34.

Regarding claim 36, with reference to figure 2, Zellner discloses a method in a communication system for communication of data, the method comprising:

Detecting non-availability of idle channel, (reads on detecting an overload condition in said communication system);

Allocating a vacated channel from a lower priority user to the requesting user, see column 7, lines 60-column 8, and line 34. (Reads on selecting an open connection; releasing the selected open connection based on the overload condition).

Regarding claim 37, Zellner's allocation of the vacated channel is in response to the connection request. See column 7, lines 60-column 8, and line 34.

Regarding claims 41 and 44, with reference to figure 1, Zellner discloses a cell controller 18 in connection with buffer 16 comprising a plurality of queues (claimed plurality of resources and connection controllers in communication with the resource manager for making requests for allocating communication resources to a connection) and home location register 20, the cell controller for controlling the buffer 16 (reads on claimed a resource manager for managing a plurality of resources); the cell controller is a high speed general purpose computer for controlling the functions of the mobile switch 14. In addition Zellner discloses receiving a call request at a mobile switch and ascertaining an available idle channel; and assigning the idle channel to the user, see

Art Unit: 2662

abstract, column 1, lines 37-column 2, line 24 and column 5, lines 29-column 6, line 40. (Reads on resource manager is configured to select one of the plurality of resources, to detect a request for opening a connection for a user for communication of data, and to release the selected open connection for allocating, to the user, communication resources corresponding to resources released based on the release of the selected open connection).

Regarding claims 23, 42 and 43, Zellner discloses allocating a vacated channel from a lower priority user to be used by the requesting higher priority user, see column 8, line 21-26.

Regarding claim 39 and 40, Zellner discloses allocating a vacated channel from a lower priority user to be used by the requesting higher priority user, see column 8, line 21-26.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 34, 35, 38 and 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zellner.

Regarding claims 34 and 38, Zellner discloses substantially all the limitations of the respective base claims 1 and 36, except it does not disclose the overload condition is based on detecting a predetermined number of existing connections.

However, it would have been obvious to an ordinary person of skill in the art at the time the invention was made to determine overload condition in Zellner system based on a number of predetermined existing connection instead of non-available idle channels as a design choice.

Regarding claim 35, discloses substantially all the limitations of parent claim 33, except it doesn't disclose the overload condition is based on reverse link monitoring.

Examiner takes official notice that link monitoring is well known in the art. Since

Regarding claims 45 and 48, Zellner discloses a method in a communication system for communication of data, the method comprising:

Receiving a call request at a mobile switch (reads on detecting a request for opening a connection for a user for communication of data);

Ascertaining an available idle channel; and assigning the idle channel to the user, see abstract, column 1, lines 37-column 2, line 24. (Reads on selecting an open connection; releasing said selected open connection; allocating to user, communication resources corresponding to resources released based on the releasing the selected open connection).

Zellner doesn't disclose that the selecting of the idle channel is based on grade of service assigned to the idle channel (open connection).

However, it would have been obvious to an ordinary person of skill in the art at the time the invention was made to make the idle channel selection of Zellner depends on grade of service so that call priority can be established in case of congestion.

Regarding claim 46 and 47. Zellner discloses allocating a vacated channel from a lower priority user to be used by the requesting higher priority user, see column 8, line 21-26. (Reads on selected open channel is in a idle open state as in claim 46, and busy open state as in claim 47).

Allowable Subject Matter

3. Claims 5-32, 49 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Hluchyj et al, US (5,488,609); Selinger, US (6,345,038); Rautanen et al, US (6,353,605); Abrol et al, US 2002/0068570; Bender et al, US (6,539,030); cdma2000 High Rate Packet Data Air Interface Specification, October 27, 2000.


Art Unit: 2662

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AHMED ELALLAM whose telephone number is (703) 308-6069. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kizou Hassan can be reached on (703) 305-4744. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

AHMED ELALLAM
Examiner
Art Unit 2662
January 15, 2004



HASSAN KIZOU
SUPERVISORY PATENT EXAMINER
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